IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 6038 of 2005

SURENDRA KUMAR
V/S
SURYA PRAKASH & ANR.

Mr. KC SAMDARIYA, for the appellant / petitioner

Date of Order : 24.4.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner. The matter comes up on the application filed by the petitioner for early listing of the matter for admission. On the request of the learned counsel for the petitioner, the matter has been heard for admission at this stage itself.

By this petition, the petitioner seeks to challenge the order Annexure-9 passed by the learned trial court, whereby, the learned trial court has dismissed the petitioner's application filed under Section 45 of the Evidence Act read with Section 151 CPC, whereby, request was made for examination of the signatures of tester Keshari Chand on the will by hand writing expert.

The learned trial court has found that will was produced before settlement of issues and no such request was made earlier, apart from the fact, that the aspect on the basis of which the signatures are required to be got examined by the hand writing expert has not been put to PW-2 in cross-examination, and also, that the plaintiff's

evidence is already over way back on 25.07.2003, and since then petitioner has been prolonging the litigation by filing one or another application.

I have heard learned counsel for the petitioner and I have gone through the documents filed with the writ petition, so also the documents filed in compliance of the order of this Court dated 14.11.2005, and find, that from the written statement it is clear, that it is not in dispute that petitioner is a tenant in the property, and admits to be tenant from the deceased Keshari Chand, the father of the petitioner.

In these circumstances, for the reasons given by the learned trial court, if the petitioner is denied the request for examination of the will from the hand writing expert, it cannot be said that the petitioner would suffer any substantial failure of justice, nor can it be said, that in passing the impugned order, the learned trial court has committed any error.

The writ petition is therefore, dismissed summarily. The learned trial court is directed to expeditiously decide the main suit itself.

(N P GUPTA),J.

/ashwini/